

Effective 5/13/2014

31A-27a-701 Priority of distribution.

- (1)
- (a) The priority of payment of distributions on unsecured claims shall be in accordance with the order in which each class of claim is set forth in this section except as provided in Section 31A-27a-702.
 - (b) All claims in each class shall be paid in full or adequate funds retained for the claim's payment before a member of the next class receives payment.
 - (c) All claims within a class shall be paid substantially the same percentage.
 - (d) Except as provided in Subsections (2)(a)(i)(E), (2)(k), and (2)(m), subclasses may not be established within a class.
 - (e) A claim by a shareholder, policyholder, or other creditor may not be permitted to circumvent the priority classes through the use of equitable remedies.
- (2) The order of distribution of claims shall be as follows:
- (a) a Class 1 claim, which:
 - (i) is a cost or expense of administration expressly approved or ratified by the liquidator, including the following:
 - (A) the actual and necessary costs of preserving or recovering the property of the insurer;
 - (B) reasonable compensation for all services rendered on behalf of the administrative supervisor or receiver;
 - (C) a necessary filing fee;
 - (D) the fees and mileage payable to a witness;
 - (E) an unsecured loan obtained by the receiver, which:
 - (I) unless its terms otherwise provide, has priority over all other costs of administration; and
 - (II) absent agreement to the contrary, shares pro rata with all other claims described in this Subsection (2)(a)(i)(E); and
 - (F) an expense approved by the rehabilitator of the insurer, if any, incurred in the course of the rehabilitation that is unpaid at the time of the entry of the order of liquidation; and
 - (ii) except as expressly approved by the receiver, excludes any expense arising from a duty to indemnify a director, officer, or employee of the insurer which expense, if allowed, is a Class 7 claim;
 - (b) a Class 2 claim, which:
 - (i) is a reasonable expense of a guaranty association, including overhead, salaries, or other general administrative expenses allocable to the receivership such as:
 - (A) an administrative or claims handling expense;
 - (B) an expense in connection with arrangements for ongoing coverage; and
 - (C) in the case of a property and casualty guaranty association, a loss adjustment expense, including:
 - (I) an adjusting or other expense; and
 - (II) a defense or cost containment expense; and
 - (ii) excludes an expense incurred in the performance of duties under Section 31A-28-112 or similar duties under the statute governing a similar organization in another state;
 - (c) a Class 3 claim, which:
 - (i) is:
 - (A) a claim under a policy of insurance including a third party claim;
 - (B) a claim under an annuity contract or funding agreement;
 - (C) a claim under a nonassessable policy for unearned premium;

- (D) a claim of an obligee and, subject to the discretion of the receiver, a completion contractor under a surety bond or surety undertaking, except for:
 - (I) a bail bond;
 - (II) a mortgage guaranty;
 - (III) a financial guaranty; or
 - (IV) other form of insurance offering protection against investment risk or warranties;
- (E) a claim by a principal under a surety bond or surety undertaking for wrongful dissipation of collateral by the insurer or its agents;
- (F) an indemnity payment on:
 - (I) a covered claim; or
 - (II) a payment for the continuation of coverage made by an entity responsible for the payment of a claim or continuation of coverage of an insolvent health maintenance organization;
- (G) a claim for unearned premium;
- (H) a claim incurred during the extension of coverage provided for in Sections 31A-27a-402 and 31A-27a-403; or
- (I) all other claims incurred in fulfilling the statutory obligations of a guaranty association not included in Class 2, including:
 - (I) an indemnity payment on covered claims; and
 - (II) in the case of a life and health guaranty association, a claim:
 - (Aa) as a creditor of the impaired or insolvent insurer for a payment of and liabilities incurred on behalf of a covered claim or covered obligation of the insurer; and
 - (Bb) for the funds needed to reinsure the obligations described under this Subsection (2)(c)(i)(I)(II) with a solvent insurer; and
- (ii) notwithstanding any other provision of this chapter, excludes the following which shall be paid under Class 7, except as provided in this section:
 - (A) an obligation of the insolvent insurer arising out of a reinsurance contract;
 - (B) an obligation that is incurred pursuant to an occurrence policy or reported pursuant to a claims made policy after:
 - (I) the expiration date of the policy;
 - (II) the policy is replaced by the insured;
 - (III) the policy is canceled at the insured's request; or
 - (IV) the policy is canceled as provided in this chapter;
 - (C) an obligation to an insurer, insurance pool, or underwriting association and the insurer's, insurance pool's, or underwriting association's claim for contribution, indemnity, or subrogation, equitable or otherwise, except for direct claims under a policy where the insurer is the named insured;
 - (D) an amount accrued as punitive or exemplary damages unless expressly covered under the terms of the policy, which shall be paid as a claim in Class 9;
 - (E) a tort claim of any kind against the insurer;
 - (F) a claim against the insurer for bad faith or wrongful settlement practices; and
 - (G) a claim of a guaranty association for assessments not paid by the insurer, which claims shall be paid as claims in Class 7; and
- (iii) notwithstanding Subsection (2)(c)(ii)(B), does not exclude an unearned premium claim on a policy, other than a reinsurance agreement;
- (d) a Class 4 claim, which is a claim under a policy for mortgage guaranty, financial guaranty, or other forms of insurance offering protection against investment risk or warranties;
- (e) a Class 5 claim, which is a claim of the federal government not included in Class 3 or 4;

- (f) a Class 6 claim, which is a debt due an employee for services or benefits:
 - (i) to the extent that the expense:
 - (A) does not exceed the lesser of:
 - (I) \$5,000; or
 - (II) two months' salary; and
 - (B) represents payment for services performed within one year before the day on which the initial order of receivership is issued; and
 - (ii) which priority is in lieu of any other similar priority that may be authorized by law as to wages or compensation of employees;
- (g) a Class 7 claim, which is a claim of an unsecured creditor not included in Classes 1 through 6, including:
 - (i) a claim under a reinsurance contract;
 - (ii) a claim of a guaranty association for an assessment not paid by the insurer; and
 - (iii) other claims excluded from Class 3 or 4, unless otherwise assigned to Classes 8 through 13;
- (h) subject to Subsection (3), a Class 8 claim, which is:
 - (i) a claim of a state or local government, except a claim specifically classified elsewhere in this section; or
 - (ii) a claim for services rendered and expenses incurred in opposing a formal delinquency proceeding;
- (i) a Class 9 claim, which is a claim for penalties, punitive damages, or forfeitures, unless expressly covered under the terms of a policy of insurance;
- (j) a Class 10 claim, which is, except as provided in Subsections 31A-27a-601(2) and 31A-27a-601(3), a late filed claim that would otherwise be classified in Classes 3 through 9;
- (k) subject to Subsection (4), a Class 11 claim, which is:
 - (i) a surplus note;
 - (ii) a capital note;
 - (iii) a contribution note;
 - (iv) a similar obligation;
 - (v) a premium refund on an assessable policy; or
 - (vi) any other claim specifically assigned to this class;
- (l) a Class 12 claim, which is a claim for interest on an allowed claim of Classes 1 through 11, according to the terms of a plan to pay interest on allowed claims proposed by the liquidator and approved by the receivership court; and
- (m) subject to Subsection (4), a Class 13 claim, which is a claim of a shareholder or other owner arising out of:
 - (i) the shareholder's or owner's capacity as shareholder or owner or any other capacity; and
 - (ii) except as the claim may be qualified in Class 3, 4, 7, or 12.
- (3) To prove a claim described in Class 8, the claimant shall show that:
 - (a) the insurer that is the subject of the delinquency proceeding incurred the fee or expense on the basis of the insurer's best knowledge, information, and belief:
 - (i) formed after reasonable inquiry indicating opposition is in the best interests of the insurer;
 - (ii) that is well grounded in fact; and
 - (iii) is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and
 - (b) opposition is not pursued for any improper purpose, such as to harass, to cause unnecessary delay, or to cause needless increase in the cost of the litigation.
- (4)

- (a) A claim in Class 11 is subject to a subordination agreement related to other claims in Class 11 that exist before the entry of a liquidation order.
- (b) A claim in Class 13 is subject to a subordination agreement, related to other claims in Class 13 that exist before the entry of a liquidation order.

Amended by Chapter 290, 2014 General Session

Amended by Chapter 300, 2014 General Session